IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3211 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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DINESHBHAI MULJIBHAI ROHIT & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MP SHAH for Applicant(s) : 1 - 3.MS. KRUTI M SHAH for Applicant(s) : 1 - 3.
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR RAMNANDAN SINGH for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/06/2007

ORAL JUDGMENT

1. Rule. Mr. R.C.Kodekar, learned Additional Public Prosecutor, waives service of rule on behalf of the respondent No.1. Mr. Ramnandan Singh, learned

Advocate waives service of rule on behalf of respondent No.2.

2. With the consent of the learned Advocates appearing on behalf of the respective parties, the matter is taken up for final hearing today. The short grievance which has been raised in the present application is that before quashing and setting aside the order dated 14.09.2006 passed by learned Judicial Magistrate (First Class), ChhotaUdepur in Inquiry Case No. 4 of 2003 in Revision Application filed under Section 397 of the Criminal Procedure Code, the petitioner has not been heard. The learned Advocates appearing on behalf of the respective parties tried to submit on merits, however, in view of the fact that this Court proposes to remand the matter to the Revisional Court, this Court is not considering the case on merits. It is an admitted position that though initially, the petitioners were joined as party respondents to the Revision Application No. 8 of 2006 and the learned Revisional Court issued notice upon the petitioners, subsequently, they were deleted and the impugned order has been passed by the learned Additional Sessions Judge, Vadodara Camp at ChottaUdepur quashing and setting aside the order passed by the learned Judicial Magistrate (First Class) granting “B” Summary in Inquiry Case No. 4 of 2003.

3. Considering the aforesaid facts and circumstances of the case and when the order dated

14.09.2006 passed by the learned Judicial Magistrate (First Class) in Inquiry Case No. 4 of 2003 which was in favour of the petitioners has been set aside by the learned Additional Sessions Judge, without giving opportunity to the petitioners, without entering into the merits of the case the impugned order dated 23.02.2007 passed by the learned Additional Sessions Judge, Vadodara, Camp at ChhotaUdepur in Revision Application No. 8 of 2006 is hereby quashed and set aside. Learned Additional Sessions Judge, Vadodara, Camp at ChhotaUdepur is directed to join the petitioners as party respondents to the said Revision Application No. 8 of 2006 and pass an appropriate order in accordance with law and on merits after giving opportunity to the petitioners, respondent No.2 as well as the learned Additional Public Prosecutor. It is agreed between the parties that the petitioners as well as respondent No.2 will appear before the learned Additional Sessions Judge, Vadodara, Camp at ChhotaUdepur on 4th July, 2007 for making necessary submission on merits and the learned Additional Sessions Judge, Vadodara, Camp at ChhotaUdepur is directed to decide and dispose of the Revision Application on remand in accordance with law and on merits on or before 30th July, 2007. The learned Advocates appearing on behalf of the respective parties are directed to cooperate learned Revisional Court for deciding the Revision Application as early as possible and within stipulated time as stated above. It is however, made clear that this Court has not expressed any opinion on merits of the case in favour of either parties. It is ultimately for the learned Additional Sessions

Judge to pass an appropriate order in the aforesaid Revision Application in accordance with law and on merits. With these, present application is allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R.Shah, J.]

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